

Amendment No. 1 to HB0935

Lundberg
Signature of Sponsor

AMEND Senate Bill No. 180*

House Bill No. 935

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 8, is amended by adding the following language as new sections:

39-13-810.

(a) All property, both personal and real, including money, vehicles, and other property used, or intended for use, in the course of, derived from, or realized through conduct in violation of this part, is subject to seizure and forfeiture to the state.

(b)

(1) The following people or agencies may make a claim with the court where the conviction occurs for reimbursement for damages caused by or costs associated with the investigation and prosecution of the criminal violations, or the seizure and forfeiture of property under this part:

(A) Any person who suffers personal injury or property damage from the offense or any person entitled to bring suit pursuant to § 20-5-106 for death resulting from the offense; or

(B) The law enforcement agency or other governmental agency that participated in the investigation, mitigation, or prosecution of the criminal offense or that participated in the seizure and forfeiture.

(2) No interest in real or personal property, money, or other assets seized shall be subject to forfeiture pursuant to this section if the court finds at least one (1) of the following:

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(A) The owner or interest holder acquired the property before the conduct alleged to give rise to its forfeiture; or

(B) The owner or interest holder acquired the property during or after the conduct alleged to give rise to its forfeiture, and the owner or interest holder acquired this interest as a good faith purchaser for value, or acquired this interest in a commercially reasonable manner, and the owner or interest holder:

(i) Acted reasonably to prevent the conduct giving rise to forfeiture; or

(ii) Did not know of the acts giving rise to forfeiture.

(3) No interest in real or personal property, money, or any other item subject to forfeiture under this section shall be seized or forfeited, unless the owner or interest holder is convicted of a crime or crimes prohibited by this part. If the owner or interest holder is an entity other than a natural person, the property shall not be forfeited unless the entity's officer, employee, or agent is convicted of the crime or crimes under this part, and the state shall also have the burden to establish beyond a reasonable doubt the following additional elements:

(A) The conviction is based on acts by the defendant in the course of and within the scope of the defendant's employment; and

(B) The entity knew or had reason to know from information in the entity's possession, other than through its convicted officer, employee, or agent, of the criminal nature of the acts.

(4) If the owner or interest holder in the seized property is not convicted of a violation of this part and is no longer subject to prosecution for the conduct giving rise to the forfeiture action, the property shall be returned to the owner or interest holder, unless the property is otherwise subject to forfeiture. The owner or interest holder may subsequently file a petition with the court that had jurisdiction over the forfeiture claim to recover reasonable attorney's fees and any actual damages resulting from the seizure and forfeiture proceedings.

(c) The state may stipulate that the interest of an owner or interest holder is exempt from forfeiture upon presentation of proof of the claim as provided in § 39-11-704.

(d) All property seized and forfeited pursuant to this section shall be sold at public auction, and the proceeds from the sale shall be distributed as follows:

(1) Any victim of the offense may file a claim with the court prior to the defendant's determination of guilt. Any claim the court finds to be verified and a result of the offense shall be approved by the court and paid first from the proceeds. The court shall determine the proper amount of damages using the restitution procedure in § 40-35-304, but the provisions of this act shall prevail with regard to the scope of damages for which a victim may claim.

(2) The costs of investigation shall be paid to the law enforcement agency or governmental agency that conducted the investigation; provided:

(A) If more than one (1) law enforcement agency or governmental agency equally conducted the investigation, the costs of investigation

shall be paid equally to the law enforcement agencies and governmental agencies conducting the investigation; and

(B) If one (1) law enforcement agency or governmental agency primarily conducted the investigation, the costs of investigation first shall be paid to that law enforcement agency or governmental agency, with actual vouchered costs reimbursed on a pro rata basis to the other law enforcement agencies or governmental agencies participating in the investigation, not to exceed ten percent (10%) of the costs of investigation allocated to the primary law enforcement agency or governmental agency;

(3) The remainder of the proceeds shall be paid on a pro rata basis to a law enforcement agency or governmental agency that participated in the mitigation, seizure, or forfeiture process.

39-13-811.

(a) Notwithstanding whether criminal prosecution is commenced, or a conviction is obtained for a violation of this part, a victim of a violation of this part shall have a civil cause of action against the person responsible for the violation for both economic and noneconomic damages, up to the limits provided in § 29-39-102, for any personal injury, death, or property damage proximately caused by the violation.

(b) If the victim prevails in the action, the victim shall be entitled to all necessary costs incurred in bringing the action, including reasonable attorney's fees, and shall be eligible for punitive damages up to the limits set in § 29-39-104.

(c) Notwithstanding the provisions of § 28-3-104, an action under this section shall be commenced within five (5) years of the date the cause of action accrued.

(d) If the victim prevailed and is awarded a judgment for damages, the judgment shall be offset by any amount the victim actually receives from the proceeds of assets

forfeited pursuant to § 39-13-810 or from the criminal injuries compensation fund. If the amount of damages the criminal court judge determines to be appropriate pursuant to § 39-13-810(d)(1) and the amount of any judgment awarded the victim pursuant to this section are different, for the purpose of determining the total amount of damages to which the victim is entitled, the higher amount shall prevail.

SECTION 2. This act shall take effect July 1, 2015, the public welfare requiring it, and shall apply to prohibited conduct occurring on or after that date.